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AND SEQUOIA VILLAGE INN, LLC*

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

BUCKEYE TREE LODGE AND SEQUOIA  
VILLAGE INN, LLC, a California limited liability  
company, and 2020 O STREET CORPORATION,  
INC, D/B/A THE MANSION ON O STREET,  
individually and on behalf of themselves and all  
others similarly situated,

Plaintiffs,

vs.

EXPEDIA, INC., a Washington corporation;  
HOTELS.COM, L.P., a Texas limited partnership;  
HOTELS.COM GP, LLC, a Texas limited liability  
company; ORBITZ, LLC, a Delaware limited  
liability company; VENERE NET S.R.L. DBA  
VENERE NET, LLC, an Italian limited liability  
company; and EXPEDIA AUSTRALIA  
INVESTMENTS PTY LTD., an Australian private  
company,

Defendants.

Case No. 3:16-cv-04721-VC

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION TO FILE FIRST AMENDED  
CONSOLIDATED COMPLAINT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Date: August 10, 2017

Time: 10:00 am

Courtroom: 4

Judge: Hon. Vince Chhabria

**NOTICE OF MOTION AND MOTION**

PLEASE TAKE NOTICE that on August 10, 2017, at 10:00 a.m. in the courtroom of the Honorable Vince Chhabria, United States District Court for the Northern District of California, 450 Golden Gate Avenue, Courtroom 4, San Francisco, California, Plaintiffs will, and hereby do, move for leave to file a First Amended Consolidated Complaint pursuant to Fed. R. Civ. P. 15(a)(2) and the Court's case management order dated April 25, 2017 [ECF No. 29].

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of Allison H. Goddard, the Court's file in this action, and such further evidence and argument as the Court may permit.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION AND FACTUAL BACKGROUND**

This action alleges claims under the Lanham Act, California's unfair competition law, California's false advertising law, and common law based on a bait and switch scheme employed by Expedia through its affiliated websites. Plaintiff Buckeye Tree Lodge filed this action on August 17, 2016. [ECF No. 1.] Plaintiff The Mansion on O Street filed a related action, No. 2016-cv-01186, on March 7, 2017. The Court consolidated the two actions on April 25, 2017. [ECF No. 29.]

In the Court's Order consolidating the actions, the Court set a deadline of June 30, 2017 to seek leave to amend the pleadings. [*Id.*] Plaintiffs seek to file a First Amended Consolidated Complaint to include additional Expedia-affiliated websites in the class definitions, and correct minor typographical errors.<sup>1</sup> A true and correct copy of Plaintiffs' proposed First Amended Consolidated Complaint is attached to the Declaration of Allison H. Goddard as Exhibit 1.

**II. THE MOTION SHOULD BE GRANTED BECAUSE THE AMENDMENT WILL NOT PREJUDICE DEFENDANTS**

A party may amend a pleading once as a matter of course and thereafter only by consent of the opposing party or by leave of court. Fed. R. Civ. P. 15(a)(2). Leave should be freely given when justice

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<sup>1</sup> Under Fed. R. Civ. P. 23(c)(1)(C), a court can modify a class definition at any time, before or after certification is granted. *See Stolz v. UBCJ*, 620 F. Supp. 396, 403 (D. Nev. 1985) ("the Court may fashion [a class definition] when necessary." In an abundance of caution, however, Plaintiffs seek leave to formally modify the class definition here to maintain consistency between the pleadings and the motion for class certification that Plaintiffs intend to file.

1 requires. *Id.* If the Court has already issued a scheduling order per Fed. R. Civ. P. 16 at the time the party  
2 seeks to amend, the party must comply with Rule 16's requirements for modifying the scheduling order  
3 in addition to the requirements of Rule 15. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608  
4 (9th Cir. 1992). The scheduling order set by the Court sets a deadline of June 30, 2017, to seek leave to  
5 amend the pleadings, so this motion is timely and in compliance with Rule 16.

6       Once compliance with Rule 16 is shown, Plaintiffs must show that the amendment is proper  
7 under Rule 15. *Johnson*, 975 F.2d at 608. The Ninth Circuit construes Rule 15 broadly, requiring that  
8 leave to amend be granted with "extraordinary liberality." *Morongo Band of Mission Indians v. Rose*,  
9 893 F.2d 1074, 1079 (9th Cir. 1990); *Poling v. Morgan*, 829 F.2d 882, 886 (9th Cir. 1987). In  
10 determining whether to grant leave to amend, a court considers five factors: (1) bad faith; (2) undue  
11 delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has  
12 previously amended his complaint. *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). Not all of the  
13 factors merit equal consideration; prejudice is the "touchstone of the inquiry under rule 15(a)" and  
14 "carries the greatest weight." *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir.  
15 2003); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001).

16       All five factors weigh in favor of allowing Plaintiffs' proposed amendment. Plaintiffs have not  
17 delayed in seeking leave to amend the complaint, and have filed this motion within the schedule set by  
18 the Court. Plaintiffs have not acted in bad faith. The proposed amendment is not futile, and will not  
19 prejudice Defendants. It only seeks to clarify the class definition, which is a change allowed at any time  
20 up until judgment is entered under Rule 23(c)(1)(C). This is the first time since the actions were  
21 consolidated that Plaintiffs sought to amend the complaint. Rule 15's liberal standard for amending  
22 pleadings is satisfied here.

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**III. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant them leave to file a First Amended Consolidated Complaint.

Dated: June 30, 2017

PATTERSON LAW GROUP

By: /s/ Allison H. Goddard

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